

Writer's direct phone  
(202) 828-3575

Writer's e-mail  
jtoner@seyfarth.com

Seyfarth Shaw LLP  
975 F Street, N.W.  
Washington, DC 20004-1454  
(202) 463-2400  
fax (202) 828-5393  
www.seyfarth.com

December 28, 2017

Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570-0001

Re: National Express The Ride  
Case 01-RC-212044

Dear Executive Secretary Shinnars:

On behalf of the Employer and pursuant to Section 102.67 (j)(1)(ii) of the Board's Rules and Regulations the undersigned requests that the hearing currently scheduled for Friday January 8, 2018 in the above captioned matter be stayed and a new hearing date be directed.

The petition was filed Thursday December 21, 2017 seeking a unit of only "site supervisors.. On Friday December 22, 2017 - the Friday before the Christmas holiday- the Regional Director served a copy of the petition on the Employer along with a Notice of Hearing scheduling the hearing for Wednesday January 3, 2018. On December 27, 2017 the undersigned requested a postponement of the hearing until Tuesday January 9, 2018 for the following reasons:

- 1) Since the issuance of the Acting Regional Director's decision on April 20, 2016 in 01-RC-172902 which involved essentially the same unit there have been a number of organizational changes mandated by the Massachusetts Bay Transit Authority ("MBTA") which were effective earlier this year.
- 2) The Employer's General Manager, Victor Herrera, who is most familiar with the nature and impact of those changes had a significant accident on December 23, 2017 which required transportation by the EMS to the Milton Hospital. Although Mr. Herrera has been released from the hospital, he is on significant pain medications and so is not always readily available to discuss the matter.
- 3) Also because of the intervening holidays many of the other managers who may be involved are not available.

It is noteworthy that the Petitioner advised the Region that it agreed with the Employer's request to postpone the hearing. Nevertheless, I was advised this morning that the Acting Regional Director has denied the request and will only postpone the hearing for two work days until Friday January 5, 2018.

The Acting Regional Director's decision under these circumstances is arbitrary and should be overturned.

Section 102.63 (a)(1) of the Board's Rules and Regulations provides that "the Regional Director may postpone the hearing for more than two business days upon a request of a party showing extraordinary circumstances." It is submitted that the reasons provided by the Employer constituted "extraordinary circumstances"

Further, as the Acting Regional Director is aware, based upon the 2016 decision referenced above involving this same unit, that the primary and, most likely, only issue to be litigated is whether the petitioned for "site supervisors" are statutory supervisors. Under current case law (e.g. *WSI Savannah River Site* 363 NLRB No. 113; *Lakewood Health Center* 365 NLRB No. 10 and *Cook Inlet Tug & Barge, Inc.* 362 NLRB No. 111) there is an extremely heavy burden<sup>1</sup> on an employer to provide sufficient evidence to support its position that certain employees.

Under these circumstances, in particular the unavailability of managers due to the holidays and illness who would be able to provide the necessary evidence, the Acting Regional Director's decision is arbitrary and denies the Employer a reasonable amount of time to prepare. Therefore, it is requested that the Acting Regional Director's decision regarding the postponement be overruled; that the hearing scheduled for January 5, 2018 be stayed and that the Acting Regional Director be directed to reschedule both the hearing date and the date for the required position statement to dates which provide the Employer with reasonable time to prepare.

Sincerely,

SEYFARTH SHAW LLP



John J. Toner

JJT:djg

---

<sup>1</sup> Some might argue a near impossible burden

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Special Request in Case No. 01-RC-212044, which was filed electronically 12/28/17 with the National Labor Relations Board, was delivered this 28th day of December, 2017, via email to the following:

Michael Halley  
Field Representative  
Local Union 25  
[mhalley@teamsterslocal25.com](mailto:mhalley@teamsterslocal25.com)

Elizabeth Gemperline  
Acting Regional Director  
National Labor Relations Board  
Region 1  
10 Causeway Street, 6th Floor  
Boston, MA 02222-1001  
[lollybaby54@yahoo.com](mailto:lollybaby54@yahoo.com)

  
\_\_\_\_\_  
John J. Toner